IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 85 OF 2005

THE DIRECTOR, ALCON REAL ESTATE PVT.LTD., PANAJI GOA ....Applicants

Versus

THE HINDUSTAN WATERPROOFING CO.,THROUGH ITS PARTNER,SHRI AZIZ CHOWHAN,PANAJI GOA ....Respondents

Shri D. Pangam, Advocate for the Applicant.

Shri J.A. Lobo, Advocate for the Respondent.

Coram:- N. A. BRITTO, J.

Date:- 18th August, 2005

P.C.:

Heard Shri Pangam, the learned counsel on behalf of the Applicant/accused and Shri Lobo, the learned counsel of the respondent/complainant.

The said accused is being prosecuted in Criminal Case No.122/OA/2001/B under Section 138 of the Negotiable Instruments Act, 1881. Process was issued against the said accused under S.138 of the said Act. The accused moved an application for recall of process which was rejected because by then it was held by the Apex Court that the remedy of recalling process, once issued, was not available under the Code of Criminal Procedure, 1973. The petitioner has now invoked the jurisdiction of this Court under S.482 of Cr.P.C. 1973. It is now well settled that an order issuing process is revisable and revisional jurisdiction can be exercised by the Court of Sessions as well as by this Court in terms of the Judgment of this Court in Cr.M.A. No.52/05 (Dr. Mohan Bhave v. M/s. Travel Force decided on 6th April, 2005). The application

in this case shall be returned to the petitioner to be presented before the Sessions Court, Panaji. In case the said application is presented, the learned Sessions Judge is directed to treat the same as a revision application against the order issuing process against the accused and decide the same in accordance with law.

With the above observations, the application is disposed of.

N. A. BRITTO, J.